REMARKS

The rejections of Claims 1-5 and 8-17 under 35 U.S.C. § 103(a) as unpatentable over U.S. 6,465,555 (Nodera et al) in view of U.S. 6,987,141 (Okamoto et al), is respectfully traversed.

As recited in above-amended Claim 1, an embodiment of the present invention is a polycarbonate resin composition comprising:

(A) 5 to 98 parts by weight of a polycarbonate-polyorganosiloxane copolymer,

(B) 0 to 93 parts by weight of a polycarbonate resin,

(C) 2 to 50 parts by weight of titanium oxide,

(D) 0 to 1.0 parts by weight of a fibril-forming polytetrafluoroethylene, and

(E) 0.05 to 2.0 parts by weight of an alkylhydrogensilicone or an alkoxysilicone, wherein

the sum of the ingredients (A), (B), and (C) is 100 parts by weight, and

comprising no phosphorus compound flame retardant.

Nodera et al discloses a flame-retardant thermoplastic resin composition comprising, *inter alia*, red phosphorus, which serves as a flame retardant, as an essential component (column 1, lines 11-12). Thus, Nodera et al teach away from the presently-claimed invention.

If a proposed modification would render a prior art invention unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) (**copy enclosed**). See also MPEP 2143.01.

Okamoto et al does not remedy this fundamental deficiency of Nodera et al.

The Examiner particularly relies on Okamoto et al's disclosure of components (A)-(D) therein, and finds that said component (D) meets the requirements of presently-recited component (E).

In reply, the aspect of Okamoto et al relied on by the Examiner is drawn to a polycarbonate resin composition comprising an aromatic polycarbonate-polyorganosiloxane copolymer (A) having a particular aromatic terminal group of a general formula (III-1), an aromatic polymer carbonate (B) having a particular aromatic terminal group containing an alkyl group of 21-35 carbons, of a general formula (III-2), and a fibril-forming polytetrafluoroethylene (C) (column 5, line 36 through column 6, line 15), **or** a polycarbonate resin composition comprising an aromatic polycarbonate-polyorganosiloxane copolymer (D) having a terminal group of general formula (III-2') and said fibril-forming polytetrafluoroethylene (C), wherein general formula (III-2') is the same as (III-2) (column 6, lines 16-41). Thus, Okamoto et al's composition must contain a particular aromatic terminal group containing an alkyl group of 21-35 carbons, either (1) on an aromatic polycarbonate that is combined with aromatic polycarbonate-polyorganosiloxane copolymer not containing such a group (components (A) and (B)), or (2) on an aromatic polycarbonate-polyorganosiloxane copolymer (component (D)). While Okamoto et al discloses the addition of additives, abbreviated as component (E), which may be of inorganic fillers, additives, other synthetic resins and elastomers not interfering with the object of the invention (column 37, lines 33-37), among which are listed titanium oxide, and "silicone oil" as a lubricant (column 37, lines 49-50), there is no disclosure or suggestion of presently-recited ingredient (E). It must be kept in mind that presently-recited ingredient (E) is different from the polyorganosiloxane-containing polycarbonate-polyorganosiloxane copolymer ingredient (A). See also the specification at page 9, lines 22-24.

It appears that the Examiner has misinterpreted Okamoto et al, finding, in effect, that component (D) therein is part of a composition containing components (A), (B) and (C). As discussed above, it is not. Okamoto et al neither discloses nor suggests a composition comprising a polycarbonate-polyorganosiloxane copolymer **and** an organosiloxane.

Nevertheless, even if the Examiner's interpretation of Okamoto et al were correct, there is still no disclosure or suggestion therein to remove the red phosphorus flame retardant therein.

Claim 15 is separately patentable, because the silicone compound (E) of Nodera et al is not inclusive of an alkyl hydrogen silicone.

For all the above reasons, it is respectfully requested that the rejection be withdrawn.

All of the presently-pending claims in this application are now believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Respectfully submitted,

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In re Wright

U.S. Court of Appeals Federal Circuit
9 USPQ2d 1649

Decided January 24, 1989
No. 88-1521

Headnotes

PATENTS

1. Patentability/Validity -- Adequacy of disclosure (§ 115.12)

Original specification for method of forming images using photosensitive microcapsules supports amended language of claims requiring that microcapsules be "not permanently fixed" to underlying surface, and therefore meets description requirement of 35 USC 112, since specification, which describes removal of microcapsules from surface and warns that capsules not be disturbed prior to formation of image, unequivocally teaches absence of permanently fixed microcapsules.

2. Patentability/Validity -- Obviousness -- References and claims as whole (§ 115.0904)

Claims for method of forming images which were amended to require use of photosensitive microcapsules "not permanently fixed" to support surface are not obvious in view of prior patent employing free flowing microcapsules, since prior patent, when read as whole, does not suggest using microcapsules in any manner other than by coating them on support surface with aid of binder.

Case History and Disposition:

Appeal from decision of the Board of Patent Appeals and Interferences.

Application of Richard F. Wright, serial no. 770,538, filed Aug. 8, 1985. From decision of the Board of Patent Appeals and Interferences affirming examiner's rejection of application, applicant appeals. Reversed.

Attorneys:

Mark P. Levy (Richard H. Sayler and Smith & Schnacke, with him on brief), Dayton, Ohio, for appellant.

Harris A. Pitlick (Fred E. McKelvey, solicitor and Charles A. Wendel, associate solicitor, with him on brief), for appellee.

Judge:

Before Bennett, senior circuit judge, and Friedman and Rich, circuit judges.

Opinion Text

Opinion By:

Rich, J.

This appeal is from the decision of the United States Patent and Trademark Office (PTO) Board of Patent Appeals and Interferences (board) affirming the examiner's rejection of claims 1-20, all the claims of application serial No. 770,538, filed August

28, 1985 for "Method for Forming Images Using Free Flowing Photosensitive Microcapsules." We reverse.

All claims have been treated by both the PTO and appellant Wright as a group and stand

rejected on two distinct grounds: (1) obviousness under 35 U.S.C. §103 in view of the disclosures of U.S. patents to Macaulay, No. 3,016,308, and Sanders, No. 4,440,846, the latter being assigned to the Mead Corporation, Dayton, Ohio, assignee of Wright's application at bar, the real party in interest; and (2) a rejection based on 35 USC 112 and predicated on the addition to all three independent claims as originally filed of an identical limitation, in order to distinguish the invention from prior art. The PTO contends the limitation is not supported by the specification. This limitation is shown in italics in illustrative claim 1 reproduced below.

There are three independent claims, 1, 6, and 13, the rest of the 20 claims being variously dependent. The rejections do not necessitate any separate consideration. Claim 1 in its present form reads (emphasis ours):

1. A method for forming images which comprises:

depositing a uniform layer of photosensitive microcapsules on the surface of a support, said microcapsules being in the form of a free-flowing powder *which is distributed upon said support but not permanently fixed thereto, said microcapsules* comprising a discrete capsule wall containing a photosensitive composition and said microcapsules having associated therewith an image-forming agent,

image-wise exposing said layer of photosensitive microcapsules to actinic radiation,

subjecting said layer of microcapsules to a uniform rupturing force such that said microcapsules rupture and image-wise release said internal phase, and

removing microcapsules from said support.

In the application as filed, claim 1 was exactly the same except that the word "and" took the place of the emphasized clause, which was added later. The examiner's §112 rejection was explained by him in his Answer on appeal to the board as follows:

> It is the position of the examiner that new limitation to microcapsule having term "not permanently fixed" is not supported in the disclosure and therefore is a new matter. The words "not permanently fixed" do not appear in the specification as originally filed and it is questionable whether appellant's specification, unequivocally teaches the absence of permanently fixed microcapsules.

This is the rejection under §112 which the board sustained but in doing so it added its own thinking in a somewhat different vein:

> We shall sustain this rejection. We agree with appellant that the invention claimed does not have to be described in *ipsis verbis* in order to satisfy the description requirement of §112. [case omitted] Nonetheless, the question remains as to whether the meaning of "not permanently fixed thereto" is sufficiently described in the specification to inform the public what said language is intended to encompass. From our review of

> the present disclosure, we are convinced that this limitation is subject to different interpretations and the specification is devoid of adequate guidelines to direct the public to the correct meaning. In this connection, it will be noted that the disputed terminology is not limited to a *temporary* positioning of the microcapsules on the support, but would include a relatively protracted, but "not permanent", bonding of the microcapsules to the support.

Despite the self-evident differences between what the examiner said and what the board said, the board did not suggest that it was making a new rejection under 37 CFR 1.196(b).

Although the examiner did not mention "the description requirement of §112," the board apparently took that to be the true basis of the examiner's rejection, notwithstanding the fact that its own reasoning partakes more of the notion that "not permanently fixed" is either vague and indefinite or of indeterminate breadth. But these were not stated to be grounds of rejection.

The brief for the Solicitor of the PTO, in the three pages devoted to the §112 rejection, repeats what the board said and attempts to clarify it by saying:

> he inquiry is whether [an] artisan is made aware from the description in appellant's specification that he regarded as part of his invention -- and so described in the specification -- the concept that the microcapsules are "not permanently fixed."

And again:

> The present case does not involve a breadth-description matter; the present case involves a definition-description matter, i.e., whether the specification describes the invention in a way to justify the manner in which it is now claimed.

The Section 112 Rejection

When the scope of a claim has been changed by amendment in such a way as to justify an assertion that it is directed to a *different invention* than was the original claim, it is proper to inquire whether the newly claimed subject matter was *described* in the patent application when filed as the invention of the applicant. That is the essence of the so-called "description requirement" of §112, first paragraph, which opens with the words: "The specification shall contain a written description of the invention . . . ." The invention is, necessarily, the subject matter defined in the claim under consideration. The question arises in a variety of situations some of which are catalogued in *In re Smith* , 481 F.2d 910, 914, 178 USPQ 620, 624 (CCPA 1973). As our predecessor court said in that case:

> The specification as originally filed must convey clearly to those skilled in the art the information that the applicant has invented the specific subject matter later claimed. In re

> Ruschig, supra, 54 CCPA at 1559, 379 F.2d at 996, 154 USPQ at 123. When the original specification accomplishes that, regardless of *how* it accomplishes it, the essential goal of the description requirement is realized.

In deciding the issue, the specification as a whole must be considered.

As also pointed out in *Smith* and as admitted by the board, "the claimed subject matter need not be described in haec verba in the specification in order for that specification to satisfy the description requirement." The fact, therefore, that the exact words here in question, "not permanently fixed", are not in the specification is not important. From the wording of the examiner's rejection it would seem that he did not know that; at least he wanted to be shown an "unequivocal teaching" that the microcapsules are not permanently fixed. The board, on the other hand, launched into a discussion of whether the *meaning* of the words is clear and whether the specification contains "guidelines" as to what they mean. It felt the words were open to "different interpretation", which goes to the *scope* of the phrase rather than support for it. We deem this to be an irrelevant inquiry. These are common, garden variety words known to every English-speaking person. The Associate Solicitor who argued this appeal (who was not the author of the brief) said he had no difficulty understanding their meaning, nor do we.

[1] We have read the specification, in the light of which all that the claims say must be construed, and we have considered it against the background of the prior art partially shown by the references relied on. We are fully convinced that the process of the claims, containing the words "not permanently fixed", is described in the specification.

The method disclosed in both words and drawings comprises four manipulative steps: 1. microcapsules in the form of a free-flowing powder are *deposited* on a support; 2. the layer of powder is *exposed* to actinic radiation; 3. the powder layer is subjected to a *rupturing* force; 4. the capsules are *removed* from the support. When rupturing takes place it is done against a "web" such as a sheet of paper to which the image is transferred and the specification's examples warn that until the image is formed, by the rupture, it is important that the microcapsules not be disturbed so as to change their position, showing that they are not permanently fixed on their support at that time. The 4th or last step in the method is removing the microcapsules from the support on which they were deposited as a free-flowing powder, the removal being by "wiping, brushing, and/or using vacuum means." In one embodiment of the invention, the support is an electrically charged drum such as is used in xerographic office copiers, the powder being "cascade coated" onto the drum. The specification says that in such case the removal step can be accomplished simply by discharging the drum surface. The drawing for that embodiment shows a "cleaner means 40" which removes powder from the drum following the rupturing step, removing both "the ruptured and unruptured microcapsules."

All of this convinces us that it is of the essence of the original disclosure that the microcapsules are "not permanently fixed" to their various supports. The examiner was therefore wrong in his underlying premise that the limitation added to the claim by amendment contained "new matter." The specification does unequivocally teach the absence of permanently fixed microcapsules. The §112 rejection was clearly erroneous and cannot stand. There is clear

compliance with the description requirement.

The §103 Obviousness Rejection

In rejecting all claims under §103 on Sanders in view of Macaulay, the examiner said in his Answer, in response to appellant's argument:

> The Examiner's conclusion of obviousness is not based on what the individual references themselves suggest, but [on] what logic and scientific reasoning taken with

> the combination of reference disclosures taken as a whole have suggested to one of ordinary skill in the art.

Whatever that unusual statement, quoted by the board without any suggestion of criticism, may be taken to mean, the board proceeded to make its own interpretations of Sanders and Macaulay. In discussing Sanders, the board begins with the statement, "we appreciate that the patentee [Sanders] does not disclose the use of free-flowing capsule powders to prepare his coating." The board makes no effort to establish obviousness on the basis of Sanders alone and the Solicitor takes the same position, stating in footnote 8 of his brief, "The rejection has always been based upon a combination of Sanders and Macaulay under 37 U.S.C. §103." The examiner's expressed view of Sanders is stated in his Answer as follows:

> The Examiner asserts that . . . Sanders et al '846 teach a method for forming images which comprises exposing a layer of Photosensitive microcapsules on the surface of the substrate and that *it differs from the claimed invention in having precoated imaging sheets with microcapsules rather than photosensitive microcapsules coated on a support as a free-flowing powder* . [Emphasis ours.]

Both the examiner and the board having looked to Macaulay's disclosure as suggesting to those skilled in the art the use of the microcapsules in appellant's claimed process in the form of a free-flowing powder upon a support, not permanently attached thereto and finally removed, our principal task is to examine Macaulay, particularly the portions specifically relied on.

Macaulay is a fairly early patent in this relatively recent art. Application was filed in 1957 and the patent issued in 1962. Its title is "Recording Paper Coated with Microscopic Capsules of Coloring Material. Capsules and Method of Making." The recording paper product came to be known as "carbonless paper," referred to in the specification at bar. We judicially notice its widespread current use in manifold business forms in which the colorless coating on the back of a form causes writing to appear on an underlying sheet when the one above it is written on with a pencil or ball-point pen. The coating consists of microcapsules which are ruptured by the writing pressure to release a color-former. That is what Macaulay describes. First he describes how to make microcapsules and then he describes making his "recording paper" by coating paper with the microcapsules with the aid of a variety of binders.

[2] We have carefully read every word of the Macaulay specification, paying particular attention to the passages relied on by the examiner, the board, and the Solicitor. Our conclusion is that nowhere does Macaulay suggest using microcapsules, which necessarily are in the form of a free-flowing dry powder to begin with, except by coating them on a sheet of paper or similar web material with the aid of a binder. We also conclude that the PTO's attempt to show the contrary consists of taking statements wholly out of context and giving them meanings they would not have had to one skilled in the art having no knowledge of appellant's invention, or to anyone else who can read the specification with understanding.

The first passage cited by the PTO is the second of five "objects" of the invention. (Col. 2, lines 62-67) It reads:

> It is another object of this invention to provide a substantially dry free-flowing powder of microscopic discrete capsules of marking fluid which may be applied to paper in a variety of ways and which *does not require an aqueous coating system* in preparing a pressure-sensitive copying material from the capsules. [Our emphasis.]

Both the examiner and the board attempt to use the emphasized words to support the patently absurd notion that Macaulay is suggesting the making of a recording paper having a transfer coating, which the patent states to be one purpose of the invention, by sprinkling dry powder on a piece of paper. What they overlook or purposely ignore is that the specification, before stating the above object, contains a long passage decrying the use of *aqueous* coatings on paper because of their many disadvantages. What the passage is saying is that various binder systems *other than aqueous* may be used with Macaulay's capsules and when he comes to describing them he names several, all of which are used to "affix" the microcapsules to the sheet of paper or whatever.

The next passage, relied on only by the board, is at col. 7, lines 60 et seq. where, the board says, "Macaulay addresses the important advantages of the free-flowing capsule powders of his invention." It reads:

> Among the important advantages of the free-flowing capsule powders of the invention is the extreme flexibility and versatility in the manner in which they may be applied to web material, such as paper, to provide a pressure sensitive copying material having a coating of the rupturable capsules according to the invention which permits copying.

About this, the board said:

> Although Macaulay also discloses that the powders may be applied to a surface having a binder material, to adhere the cap

> sules to the substrate, the overall disclosure of the reference is incompatible with

appellant's suggestion that a binder coating is essential.

The argument falls of its own weight since every copying material disclosed in the reference has a binder; but it is also interesting to note that the passage the board relied on follows directly after this short paragraph:

> A coating of capsules and binder weighing 1 to 6 lbs., and preferably 2 lbs., per 500 sheets of 20" x 30" paper in which 50 to 95% of the weight of the coating consists of capsules has been found to be satisfactory.

The board's view of the "overall disclosure of the reference" is simply insupportable. Immediately after the sentence about versatility on which the board relied, the specification goes on for at least 30 lines to explain the great variety of *binders* which may be employed, explaining once again that *aqueous* binders can be avoided. Nowhere is the omission of a binder even hinted at as a possibility.

The Solicitor's brief says "Examples I, III, and VI of Macaulay show that one can achieve the desired imaging from microcapsules without having to bond them to a support layer." They show no such thing. They are simply examples of how to make the microcapsules and contain brief general statements at the end of each example on the color of the mark which is produced when the capsules are used as the patentee intends. They do not undertake to describe the application of the capsules to paper. Furthermore, this is a new argument by the Solicitor not presented to the board.

For the above reasons, we find the §103 rejection to be in error.

Conclusion

The decision of the board affirming the examiner's rejection of claims 1-20 of application serial No. 770,538 is *reversed*.

REVERSED

- End of Case -

In re Gordon et al.

(CA FC)
221 USPQ 1125

Decided May 10, 1984
No. 83-1281
U.S. Court of Appeals Federal Circuit

Headnotes

PATENTS

1. Patentability -- Anticipation -- Modifying references (§ 51.217)

Question is not whether patentable distinction is created by viewing prior art apparatus from one direction and claimed apparatus from another, but whether it would have been obvious from fair reading of prior art reference as whole to turn prior art apparatus upside down; mere fact that prior art could be modified by turning apparatus upside down does not make modification obvious unless prior art suggested desirability of modification.

Particular patents -- Blood Filters

Gordon and Sutherland, Blood Filter Assembly, Rejection of claims 1-3 and 5-7 reversed.

Case History and Disposition:

Application for patent of Lucas S. Gordon and Karl M. Sutherland, Serial No. 124,312, filed

Feb. 25, 1980. From decision rejecting claims 1-3 and 5-7, applicants appeal. Reversed.

Attorneys:

James W. Geriak, Los Angeles, Calif. (Bradford J. Duft, Los Angeles, Calif., on the brief) for appellants.

John F. Pitrelli (Joseph F. Nakamura and John W. Dewhurst, on the brief) for Patent and Trademark Office.

Judge:

Before Bennett and Miller, Circuit Judges and Skelton, Senior Circuit Judge.

Opinion Text

Opinion By:

Miller, Circuit Judge.

This appeal is from the decision of the United States Patent and Trademark Office ("PTO") Board of Appeals ("board") affirming the examiner's rejection of appellants' claims [1] 1-3 and 5-7 as unpatentable under 35 U.S.C. §103. We reverse.

The Invention

Appellants claim a "blood filter assembly" used during surgery and other medical procedures involving the handling of blood to remove clots, bone debris, tissue, or other foreign materials from blood before it is returned to a patient's body. Unlike blood filter assemblies widely used in the prior art, the device of the present invention permits both entry of the blood into, and ultimate discharge of the blood out of, the *bottom* end of the filter assembly, as shown below. [2]
Tabular, graphic, or textual material set at this point is not available. Please consult hard copy or call BNA PLUS at 1-800-452-7773 or 202-452-4323.

The blood filter assembly comprises a shell 1 provided with blood inlet 3 and blood outlet 4. Between the blood inlet and the blood outlet is filter medium 6 positioned within the filter medium core 7.

The location of blood inlet 3 is such that the incoming blood is directed along a spirally upward path by the inner wall of the shell. Further, the location of the blood inlet at the bottom end of the filter assembly facilitates the removal of gas bubbles by allowing them to rise upwardly out of the blood. The gas bubbles so removed are released from the blood filter assembly by means of a gas vent 5 located in the region of the top end of the assembly.

Independent claim 1, from which the other appealed claims depend, is illustrative:

Blood filter assembly comprising:

a. a shell having a first top end and a second bottom end,

b. a blood inlet located in the region of said bottom end and opening into said bottom end,

c. a blood outlet located in the region of said bottom end,

d. a gas vent located in the region of said top end, and

e. a blood filter medium located between said blood inlet and said blood outlet,

said blood inlet being located and configured in a manner capable of directing incoming blood in a generally spiral path within said shell.

Claims 2, 3, and 5-7 further define the shape of the shell, the shape of the filter medium, and the nature of the material used as the filter medium.

Prior Art

The sole reference relied upon by the board is United States Patent No. 1,175,948, issued March 21, 1916, to French. French discloses a liquid strainer for removing dirt and water from gasoline and other light oils. As shown below, the inlet 4 and outlet 5 of the French device are both at the *top* end of the device.
Tabular, graphic, or textual material set at this point is not available. Please consult hard copy or call BNA PLUS at 1-800-452-7773 or 202-452-4323.

A continuous helical tooth or thread 8 is formed integral with the inner wall of shell 1 and imparts to the incoming liquid a whirling motion, which gives the liquid a scouring action to help clean the surface of a metal screen filter 21 and guides unwanted dirt and water downwardly into a pocket 9 in the bottom of the shell. A pair of shelves 10 and 11, projecting inwardly and downwardly from the inner wall of the shell, further assists the entrance of dirt and water into the pocket 9 and prevents their being drawn back into the main chamber 12. The reference expressly states, "gravity assists in the separation of heavier oils or water." A pet-cock 13, projecting vertically downward from the bottom of the pocket is used to remove the collected dirt and water periodically. The top of the liquid strainer is completely closed by gland 3 except for the inlet and outlet openings.

Board Opinion

The board held that the appealed claims were drawn to an apparatus which "would have at

least been rendered prima facie obvious to one of ordinary skill in the art by the apparatus disclosed in French." The board's reasoning was that it would have been obvious to turn the French device upside down to have both the inlet and outlet at the bottom, rather than at the top; and to employ French's "pet-cock" as the claimed "gas vent." In the board's opinion, no patentable distinction was created by viewing French's apparatus from one direction and the claimed apparatus from another.

ANALYSIS

[1] We are persuaded that the board erred in its conclusion of prima facie obviousness. The question is not whether a patentable distinction is created by viewing a prior art apparatus from one direction and a claimed apparatus from another, but, rather, whether it would have been obvious from a fair reading of the prior art reference as a whole to turn the prior art apparatus upside down. French teaches a liquid strainer which relies, at least in part, upon the assistance of gravity to separate undesired dirt and water from gasoline and other light oils. Therefore, it is not seen that French would have provided any motivation to one of ordinary skill in the art to employ the French apparatus in an upside down orientation. The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification. See Carl Schenck, A.G. v. Nortron Corp., 713 F.2d 782, 787, 218 USPQ 698, 702 (Fed. Cir. 1983), and In re Semaker, 702 F.2d 989, 995-96, 217 USPQ 1, 6-7 (Fed. Cir. 1983), both citing In re Imperato, 486 F.2d 585, 587, 179 USPQ 730, 732 (CCPA 1973).

Indeed, if the French apparatus were turned upside down, it would be rendered inoperable for its intended purpose. The gasoline to be filtered would be trapped in pocket 9, and the water French seeks to separate would flow freely out of the outlet 5. Further, unwanted dirt would build up in the space between the wall of shell 1 and screen 21, so that, in time, screen 21 would become clogged unless a drain valve, such as pet-cock 13, were re-introduced at the new "bottom" of the apparatus. See In re Schulpen, 390 F.2d 1009, 1013, 157 USPQ 52, 55 (CCPA 1968). In effect, French teaches away from the board's proposed modification.

Because the PTO has failed to establish a prima facie case of obviousness, the rejection of claims 1-3 and 5-7 as unpatentable under 35 U.S.C. §103 must be *reversed* . [3]

Reversed

Footnotes

Footnote 1. In application Serial No. 124,312, filed February 25, 1980, for a "Blood Filter."

Footnote 2. Extraneous numbers have been removed from this and the subsequent drawing for clarification.

Footnote 3. Because our holding that the PTO has failed to establish a prima facie case is dispositive, it is unnecessary to reach other arguments raised by appellants.

- End of Case -